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Minn. R. Civ. App. P. 136.01, subd. 1(c).*

**STATE OF MINNESOTA
IN COURT OF APPEALS
A23-0500**

In the Matter of the Welfare of the Child of: W. H. K., Parent.

**Filed August 28, 2023
Affirmed
Kirk, Judge***

Hennepin County District Court
File No. 27-JV-21-2394

David C. Gapen, Gapen, Larson & Johnson, L.L.C., Minneapolis, Minnesota (for appellant-father W.H.K.)

Mary F. Moriarty, Hennepin County Attorney, Mary M. Lynch, Christopher W. Gray, Assistant County Attorneys, Minneapolis, Minnesota (for respondent Hennepin County Human Services Department)

Colleen J. Landseidel Case, Capistrant Van Loh, P.A., Minneapolis, Minnesota (for respondent-mother K.J.M.-A.)

Michael P. Berger, Fourth District Chief Public Defender, Paul J. Maravigli, Assistant Public Defender, Minneapolis, Minnesota (for respondent child)

Karmen Nelson, Minneapolis, Minnesota (guardian *ad litem*)

Considered and decided by Johnson, Presiding Judge; Cochran, Judge; and Kirk, Judge.

* Retired judge of the Minnesota Court of Appeals, serving by appointment pursuant to Minn. Const. art. VI, § 10.

NONPRECEDENTIAL OPINION

KIRK, Judge

In this appeal from the district court's transfer of legal custody rights, appellant-father argues that the district court abused its discretion by permanently transferring sole legal custody and sole physical custody of his child to the child's mother because it determined that: (1) the county and mother sufficiently pleaded a prima facie case of egregious harm; (2) mother properly petitioned for a transfer of permanent legal and physical custody; (3) the county provided reasonable efforts to reunite father and the child; and (4) transfer of legal and physical custody is in the child's best interests. We affirm.

FACTS

W.H.K. (appellant-father) and K.J.M.-A. (respondent-mother) are the parents of one child, who was born in 2010. Father and mother never married, and they do not live together. They shared joint legal and joint physical custody of the child until March 2023, when the district court issued the order that is the subject of this appeal.

On September 21, 2021, the child, who was staying overnight at father's house, ate food from the refrigerator that was marked, "Don't eat my food." Father called the child into the kitchen after discovering the missing food. Father confronted the child, became angry, and began choking and slapping the child.

Mother arrived at the child's school the next day. When the child entered mother's vehicle and removed his face mask, mother observed a series of marks on his left cheek. Mother asked the child where the marks came from, and the child answered that father had

choked and slapped him the night before. Mother and the child reported the abuse to Hennepin County.

On September 24, 2021, mother obtained an order for protection (OFP) in Ramsey County against father that prevented him from seeing the child. In October 2021, Hennepin County petitioned for the termination of father's parental rights (TPR), alleging that father had subjected the child to egregious harm under what was then Minn. Stat. § 260C.503, subd. 2(a)(1) (2020) (requiring the responsible social services agency to file a TPR petition where a child has been subjected to egregious harm). In November 2021, father moved to dismiss the petition. In December 2021, the district court denied father's motion, finding that the county made a prima facie case that father subjected the child to egregious harm. It then relieved the county of its responsibility to provide reasonable efforts to reunite father with the child. Despite being relieved of providing reasonable efforts, the county offered father several services aimed at addressing his parenting behaviors.

Also in December 2021, the county charged father with one count of gross misdemeanor malicious punishment for his actions during the September 2021 incident. *See* Minn. Stat. § 609.377 (2020). The district court continued the TPR trial until father's criminal case was resolved. In January 2022, the Ramsey County district court extended the existing OFP until September 2023. In June 2022, father pleaded guilty to one count of misdemeanor malicious punishment. The district court then scheduled a two-day TPR trial for October 27 and November 1, 2022.

On October 26, 2022, one day before trial, mother petitioned for a transfer of permanent sole legal and sole physical custody of the child (TLC) to herself. The next day,

the county withdrew its TPR petition, and four days later, the county filed its own TLC petition. In November 2022, father moved to dismiss both TLC petitions. The district court denied father's motion but ordered the county to provide reasonable efforts to reunify father and the child.

The district court held a TLC trial in February 2023. Mother testified to the child's description of the September 2021 incident and to the markings on the child's face. She described other suspected incidents of abuse and provided photos that depicted bruising that the child had suffered. Mother also testified to the child's improved demeanor following the OFP. Mother explained that she petitioned for the TLC because the child wished for father to be involved in his life if father improves his parenting.

The child testified that father progressed from slapping to choking him when he turned 11 years old. The child stated that father hurt him more than 40 times and choked him six or seven times. The child further stated that, at one point during the September 2021 incident, he could not breathe and that the slapping caused his mouth to bleed.

The county case manager testified that father completed the services provided by the county. But the case manager stated that it was difficult to gauge father's progress because he denies responsibility for the September 2021 incident and places blame on mother and the child.

Father testified that he used a physical parenting style and had harmed the child. He stated that he would no longer use physical punishment when parenting. Father stated that, during the September 2021 incident, he did not hit the child and that the child's bruises likely came from the child falling down the stairs.

The guardian ad litem finally testified that the child does not want to see father until he accepts responsibility and becomes less aggressive and abusive. The guardian ad litem reasoned that a TLC is in the child’s best interests because it enables father and the child to have contact in the future, if father corrects his behavior.

In March 2023, the district court issued two orders. First, the district court determined that it had the authority to conduct a TLC trial without an antecedent child in need of protection or services (CHIPS) proceeding and that it need not find that father subjected the child to egregious harm to support the TLC. Second, the district court concluded that a TLC was in the child’s best interests and ordered a permanent transfer of sole legal and sole physical custody to mother. Father appeals.

DECISION

I. The district court did not abuse its discretion by finding that the county had alleged a prima facie case of egregious harm in its TPR petition.

Father first argues that the district court erred by denying his motion to dismiss the county’s TPR petition. “Every petition filed with the court in a juvenile protection matter . . . shall contain . . . a statement of facts that, if proven, would support the relief requested in the petition” Minn. R. Juv. Prot. P. 45.02, subd. 1. A prima facie case “means one that prevails in the absence of evidence invalidating it.” *Tousignant v. St. Louis Cnty.*, 615 N.W.2d 53, 59 (Minn. 2000) (quotation omitted), *see Woolsey v. Woolsey*, 975 N.W.2d 502, 507-08 (Minn. 2022) (stating that a party makes a prima facie case “by alleging facts that, if true, would provide sufficient grounds for [the relief sought]”). This court applies an abuse-of-discretion standard of review to a district court’s prima facie determination.

In re Welfare of Child of D.L.D., 865 N.W.2d 315, 318 (Minn. App. 2015), *rev. denied* (Minn. July 20, 2015).

The district court found that the county sufficiently pleaded a *prima facie* case of egregious harm by showing a past pattern of child abuse that amounted to third-degree assault. *See* Minn. Stat. § 260C.301, subd. 1(b)(6) (2022) (addressing egregious harm for termination of parental rights purposes); Minn. Stat. § 609.223, subd. 2 (2020) (defining third-degree assault). Egregious harm is defined as “the infliction of bodily harm to a child . . . which demonstrates a grossly inadequate ability to provide minimally adequate parental care[,]” including conduct that amounts to third-degree assault. Minn. Stat. § 260C.007 subd. 14(6); *see also In re Welfare of Child. of D.M.T.-R.*, 802 N.W.2d 759, 765 (Minn. App. 2011).

Father contends that the district court misapplied the third-degree assault statute because, per father, that statute requires the actor to “cause the death” of the child. *See* Minn. Stat. § 609.223, subd. 2; *see also* Minn. Stat. § 609.185(a)(5) (2022). The third-degree assault statute uses the definition of “child abuse” as given in section 609.185(a)(5), which is the state’s first-degree murder statute. Minn. Stat. § 609.223, subd. 2. But the third-degree assault statute does not require the actor to cause the death of the child to commit third-degree assault, as father contends. Rather, section 609.185(a)(5) incorporates the definition of “child abuse” as given in section 609.185(d) (2020), which states that “‘child abuse’ means an act committed against a minor victim” that constitutes a violation of several enumerated statutes, including, as the district court noted, fifth-degree assault. *See* Minn. Stat. § 609.185(a)(5), (d); *see also* Minn. Stat. § 609.224, subd. 1 (2020)

(defining fifth-degree assault as “caus[ing] fear of” or “intentionally inflict[ing] bodily harm upon another”). The third-degree assault statute merely incorporates the definition of “child abuse” given in section 609.185(d). Thus, the district court did not err by relying on the third-degree assault to find that the county pleaded egregious harm.

We now turn to whether the county sufficiently established a *prima facie* case of egregious harm. The petition alleged that father had choked and hit the child. The petition further alleged that father had beaten and assaulted the child over a period of several years. The pattern of child abuse alleged by the county meets the requirements of the third-degree assault statute, *see* Minn. Stat. § 609.223, subd. 2, which constitutes egregious harm, *see* Minn. Stat. § 260C.007, subd. 14(6). Therefore, the district court did not err by finding that the county sufficiently pleaded a *prima facie* case of egregious harm.

II. The district court did not abuse its discretion by ruling that mother and the county had alleged a *prima facie* case of egregious harm in its TLC petition.

Father next argues that the district court erred by denying his motion to dismiss mother’s and the county’s TLC petitions. Father’s argument fails for the same reasons stated above. Mother and the county sufficiently pleaded a pattern of child abuse that met the statutory requirements of the third-degree assault statute, *see* Minn. Stat. § 609.223, subd. 2, which thereby satisfied the statutory requirements for showing egregious harm, *see* Minn. Stat. § 260C.007, subd. 14(1). Accordingly, the district court did not err by finding that both TLC petitions made a *prima facie* showing of egregious harm.

Father also argues that the district court erred by denying father’s motion to dismiss the TLC petitions on the basis of the doctrine of laches. A court may apply the doctrine of

laches if “there has been such an unreasonable delay in asserting a known right, resulting in prejudice to others, as would make it inequitable to grant the relief prayed for.” *Carlson v. Ritchie*, 830 N.W.2d 887, 891 (Minn. 2013) (quotation omitted). This court applies an abuse-of-discretion standard of review to a district court’s decision to apply the doctrine of laches. *Jackel v. Brower*, 668 N.W.2d 685, 690 (Minn. App. 2003), *rev. denied* (Minn. Nov. 25, 2003).

The record shows that the transition to a TLC was not unreasonably delayed nor was father prejudiced by any delay. First, the district court rescheduled the TLC trial within a reasonable timeframe of three months following mother’s TLC petition. Father contends that the delay led to “three more months of [him] being unable to see his child,” but father was already prevented from seeing the child due to an active OFP. Second, father was not prejudiced by the three-month delay because the transition from a TPR to a TLC left open the possibility of father having a future relationship with the child, something that would not have been possible had the district court terminated father’s parental rights. Therefore, the district court did not abuse its discretion in not applying the doctrine of laches.

III. The district court did not abuse its discretion by allowing a permanent transfer of legal and physical custody without a preliminary CHIPS finding.

Father next argues that the district court erroneously concluded that the county could bypass a CHIPS proceeding when petitioning for a TLC. A county must petition for a TPR when a “child has been subjected to egregious harm as defined in section 260C.007, subdivision 14.” Minn. Stat. § 260C.503, subd. 2(a)(1). But it need not do so if it, instead, petitions “for transfer of permanent legal and physical custody to a relative under sections

260C.505 and 260C.515, subdivision 4.” *Id.*, subd. 2(d)(1) (2022). When reviewing a permanent transfer of custody, this court applies a clear-error standard of review to factual findings and applies an abuse-of-discretion standard of review to the district court’s finding of a statutory basis for the order. *D.L.D.*, 865 N.W.2d at 321.

The district court did not err by ruling that the county was not required to pursue a CHIPS adjudication before petitioning for a TLC. Mother petitioned for a TLC, pursuant to Minn. Stat. § 260C.515, subd. 4(6) (2022), which states “another party to the permanency proceeding regarding the child may file a petition to transfer permanent legal and physical custody to a relative.” *See also* Minn. R. Juv. Prot. P. 54.03, subd. 1. A plain reading of the statute suggests that a CHIPS proceeding is not required when a party petitions for a TLC. *See* Minn. Stat. § 260C.515, subd. 4(1)-(10) (2022).

A CHIPS proceeding is also not required because the district court found that mother and the county sufficiently established a *prima facie* case of egregious harm. If a district court finds that “the parent has subjected a child to egregious harm,” a county must file “*either* permanency pleadings under section 260C.505, *or* a termination of parental rights petition under sections 260C.141 and 260C.301.” Minn. Stat. § 260.012(a)(1), (b) (2022) (emphasis added). In this case, the county could pursue either of two options: it could petition for a TPR, as it first did, *see* Minn. Stat. § 260C.301 (2022), or it could initiate another permanency proceeding, such as a TLC, *see* Minn. Stat. §§ 260C.505, .515, subd. 4 (2022). After first petitioning for a TPR, the county changed course and petitioned for a TLC; nothing in the applicable statutes precludes it from doing so.

IV. The district court did not unconstitutionally apply Minn. Stat. § 260C.503 (2022).

Father next argues that the district court unconstitutionally deprived him of his substantive due-process right to parent his child. “A parent’s right to make decisions concerning the care, custody, and control of his or her children is a protected fundamental right.” *SooHoo v. Johnson*, 731 N.W.2d 815, 820 (Minn. 2007); *see also Troxel v. Granville*, 530 U.S. 57, 65 (2000); Minn. Stat. § 260C.007, subd. 25(a) (2022). When analyzing an as-applied challenge to the constitutionality of a statute, this court first determines whether the district court applied the correct legal framework and then considers whether the statute at issue cannot be constitutionally applied to the facts of the case. *SooHoo*, 731 N.W.2d at 824-25. This court applies a de novo standard of review when determining whether a due-process violation occurred. *In re Welfare of Child. of D.F.*, 752 N.W.2d 88, 97 (Minn. App. 2008).

For the reasons discussed above, the district court applied the correct legal framework. Mother’s TLC petition effectively invoked Minn. Stat. § 260C.515, subd. 4(6). And the county appropriately petitioned for a TLC after mother did so. *See* Minn. Stat. § 260C.503, subd. 2(d)(1). Further, the TLC statute could be constitutionally applied to the facts in this case. *See SooHoo*, 731 N.W.2d at 824-25. Neither section 260C.515, subdivision 4(6) nor section 260C.503, subdivision 2(d)(1) require an antecedent CHIPS proceeding when a party or the county petition for a TLC, as argued by father. And mother and the county sufficiently showed that father subjected the child to egregious harm, which

allows the county to proceed straight to a TLC petition. *See* Minn. Stat. § 260.012(a)(1), (b). Thus, father's constitutionality argument is unavailing.

V. The district court did not abuse its discretion by ruling that the county provided reasonable efforts to reunite father with the child.

Father next argues that the district court erred by ruling that the county provided reasonable efforts to reunite father with the child. An order for a TLC must include detailed findings of the four enumerated reasonable efforts requirements. Minn. Stat. § 260C.517(a)(1)-(4) (2022). Those requirements must be proven by clear and convincing evidence. Minn. R. Juv. Prot. P. 58.03, subd. 1. Father challenges only whether the county provided reasonable efforts. *See* Minn. Stat. § 260C.517(a)(2). In determining whether the county's efforts are reasonable, the district court should consider whether the services provided meet the standards set forth in Minn. Stat. § 260.012(h) (2022). *In re Welfare of A.M.C.*, 920 N.W.2d 648, 663 (Minn. App. 2018). Whether a county has satisfied this burden depends on the facts of each case. *In re Welfare of Child of A.M.C.*, 920 N.W.2d 648, 663 (Minn. App. 2018).

The record supports the district court's determination that the county provided reasonable efforts. The county provided several services to father that were aimed at addressing the factors that led to the TLC petition. The county case manager testified that the county provided a parenting assessment and parenting education, anger management and domestic violence programming, and individual therapy. Father confirmed that he attended the county-provided programming. Accordingly, the district court did not abuse its discretion by ruling that the county provided reasonable efforts.

VI. The district court did not abuse its discretion by ruling that a transfer of legal custody was in the child's best interests.

Father finally argues that the district court abused its discretion by ruling that the TLC was in the child's best interests. "The paramount consideration in all juvenile protection proceedings is the health, safety, and best interests of the child." Minn. Stat. § 260C.001, subd. 2(a) (2022). In a permanency proceeding, "'best interests of the child' means all relevant factors to be considered and evaluated." Minn. Stat. § 260C.511 (2022). Section 260C.511 "provides the best-interests criteria that a district court must consider before ordering a transfer of permanent legal and physical custody of a child to a relative." *In re Welfare of Child. of J.C.L.*, 958 N.W.2d 653, 656 (Minn. App. 2021), *rev. denied* (Minn. May 12, 2021).

The district court did not err because it appropriately considered the best interests of the child, and its findings were supported by the record. The district court's fashioning of the TLC order supports the potential for a future relationship between father and the child, as desired by the child. The record also supports the district court's finding that, because father has not taken responsibility for harming the child, it was in the child's best interests to be in the home of mother, where he "feels safe, comfortable, and free to be himself and grow." The county case manager testified that it was difficult to gauge father's progress in correcting his behavior because, although he completed programming, he continued to deny responsibility for harming the child. Further, the child testified that he is still scared to talk with father and is not yet ready to have a relationship with him. The district court found the testimony of mother, the child, and the case manager to be credible.

The district court's findings are supported by the record and are not clearly erroneous. Therefore, the district court did not abuse its discretion in ruling that a TLC was in the child's best interests.

Affirmed.